

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

ORDINANCE _____

AN ORDINANCE relating to employment in Seattle; adding a new chapter 14.16 to the Seattle Municipal Code; establishing minimum standards for the provision of paid sick and paid safe time; prescribing penalties, remedies and enforcement procedures; amending Section 3.14.931 of the Seattle Municipal Code; and requesting a post-implementation assessment from the Seattle Office for Civil Rights.

WHEREAS, A large number of workers in the city of Seattle will at some time during the year need temporary time off from work to take care of their own or their family members' health needs or their own or their family members' safety or other needs resulting from domestic violence, sexual assault, or stalking; and

WHEREAS, many workers do not have access to any paid leave for sick or safe days or have an inadequate number of paid sick or safe days;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council makes the following findings:

When workers have no paid sick leave or an inadequate amount available to them, they are more likely to come to work when they or their family members are sick. Workers who are compensated through tips still have a financial incentive to work when ill, even if they do have paid leave. Absent the proper care needed for treatment or recovery, the ill worker's or ill family member's health problems may intensify or be prolonged.

Employees who come to work when they are sick are likely to expose other employees, customers, and members of the public to infectious diseases, such as the flu.

Workers with no paid sick leave, or an inadequate amount to take time off to care for a sick child, are likely to send sick children to school or a child care center, thereby potentially spreading contagious illnesses.

Family economic security is at risk for workers who lack adequate paid sick leave because workers who lack paid sick leave lose earnings if they miss work to care for themselves, their children, or other family members who are ill or injured.

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

1 Victims of domestic violence, sexual assault and stalking with no paid sick leave are less
2 able to receive medical treatment, participate in legal proceedings and obtain other necessary
3 services. In addition, without paid sick leave, domestic violence victims are less able to maintain
4 the financial independence necessary to leave abusive situations, achieve safety, and minimize
5 physical and emotional injuries.

6 Paid sick and safe days will promote the safety, health and welfare of the people of the
7 City of Seattle by reducing the chances that worker's illnesses will intensify or be prolonged, by
8 reducing the exposure of co-workers and members of the public to infectious diseases, and by
9 reducing the exposure of children at schools and day cares to infectious diseases; resulting in a
10 healthier and more productive workforce, better health for older family members and children,
11 enhanced public health and improved family economic security.

12 Paid sick and safe days will enable victims of domestic violence, sexual assault and
13 stalking and their family members to participate in legal proceedings, receive medical treatment,
14 or obtain other necessary services and, thus, to maintain the financial independence necessary to
15 leave abusive situations, achieve safety, and minimize physical and emotional injuries.

16 Through the collective bargaining process, employers and represented workers can
17 develop alternative means of meeting the policy goals underlying the paid leave requirements
18 established by this ordinance.

19 To safeguard the public welfare, health, safety, and prosperity of the city of Seattle, all
20 persons working in our community should have access to adequate paid sick and safe leave,
21 because doing so will ensure a more stable workforce in our community, thereby benefiting
22 workers, their families, employers, and the community as a whole.

23
24 Section 2. A new Chapter 14.16 "Paid Sick Time and Paid Safe Time" is added to Title
25 14 of the Seattle Municipal Code as follows:

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

14.16.010. Definitions

For purposes of this chapter

A. “Adverse action” means the discharge, suspension, discipline, transfer, demotion or denial of promotion by an employer of an employee for any reason prohibited by 14.16.040.

B. “Agency” shall mean the Seattle Office for Civil Rights.

C. “Business” and “engaging in business” has the same meanings as in Chapter 5.30.

D. “City” shall mean the City of Seattle.

E. "City department" means any agency, office, board or commission of the City, or any Department employee acting on its behalf, but shall not mean a public corporation chartered under Ordinance 103387, or its successor ordinances, or any contractor, consultant, concessionaire or lessee.

F. "Charging party" means the person aggrieved by an alleged violation of this chapter or the person making a charge on another person's behalf, or the Director when the Director files a charge.

G. “Commission” means the Seattle Human Rights Commission.

H. "Director" means the Director of the Office for Civil Rights.

I. “Eating and/or drinking establishment” means a place where food and/or beverages are prepared and sold at retail for immediate consumption either on- or off-premise, but excludes food and beverage service sites, such as cafeterias, that are accessory to other activities and primarily serve students, patients and/or on-site employees.

J. “Employee” shall mean any individual employed by an employer, and shall include traditional employees, temporary workers, and part-time employees. Individuals performing services under a work study agreement are not covered by this chapter. Employees are covered by this chapter if they perform their work in Seattle. An employee who performs work in Seattle on an occasional basis is covered by this chapter only if he performs more than 240 hours of work in Seattle within a calendar year. An employee who is not covered by this Chapter is still

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

1 included in any determination of the size of the employer. In the event that a temporary
2 employee is supplied by a staffing agency or similar entity, absent a contractual agreement
3 stating otherwise, that individual shall be deemed to be an employee of the staffing agency for all
4 purposes of this chapter, except as provided in subsection 14.16.010.T.4.b.

5 K. "Employer" shall mean, as defined in subsection 14.04.030.K, any person who has
6 one or more employees, or the employer's designee or any person acting in the interest of such
7 employer. Employer size shall be determined as provided in subsection 14.16.010.T. For
8 purposes of this act, "employer" does not include any of the following:

9 1. The United States government;

10 2. The State of Washington, including any office, department, agency, authority,
11 institution, association, society or other body of the state, including the legislature and the
12 judiciary;

13 3. Any county or local government other than the City.

14 L. "Employment agency" or "staffing agency" means any person undertaking with or
15 without compensation to procure opportunities to work or to procure, recruit, refer, or place
16 individuals with an employer or in employment.

17 M. "Full-time equivalent" shall mean the number of hours worked for compensation that
18 add up to one full-time employee, based either on an eight-hour day and a five-day week or as
19 full-time is defined, in writing or in practice, by the employer.

20 N. "Health care professional" shall mean any person authorized by the City, any state
21 government and/or the federal government to diagnose and treat physical or mental health
22 conditions, including a doctor, nurse, emergency medical care provider, and/or a public health
23 clinic worker, so long as that person is performing within the scope of their practice as defined
24 by the relevant law.

25 O. "Paid sick time" and/or "paid sick days" shall mean accrued hours of paid leave
26 provided by an employer for use by an employee for an absence from work for any of the
27

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

reasons specified in 14.16.030.A.1 of this chapter, for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken. Employees are not entitled to compensation for lost tips or commissions and compensation shall only be required for hours that an employee is scheduled to have worked.

1. For purposes of determining eligibility for “paid sick time,” “family member” shall mean, as defined in the Washington Family Care Act, RCW 49.12.265 and 49.12.903, as follows:

a. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

b. "Grandparent" means a parent of a parent of an employee.

c. "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

d. "Parent-in-law" means a parent of the spouse of an employee.

e. “Spouse” means husband, wife or domestic partner. For purposes of this chapter, the terms spouse, marriage, marital, husband, wife, and family shall be interpreted as applying equally to city or state registered domestic partnerships or individuals in city or state registered domestic partnerships as well as to marital relationships and married persons to the extent that such interpretation does not conflict with federal law. Where necessary to implement this chapter, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in city or state registered domestic partnerships.

1 P. "Paid safe time" and/or "paid safe days" shall mean accrued hours of paid leave
2 provided by an employer for use by an employee for an absence from work for any of the
3 reasons specified in 14.16.030.A.2, for which time an employee shall be compensated at the
4 same hourly rate and with the same benefits, including health care benefits, as the employee
5 would have earned during the time the paid leave is taken.

6 1. For the purposes of determining eligibility for "paid safe time":

7 a. "Family or household members" shall mean, as defined in RCW 49.76.020,
8 spouses, domestic partners, former spouses, former domestic partners, persons
9 who have a child in common regardless of whether they have been married or
10 have lived together at any time, adult persons related by blood or marriage, adult
11 persons who are presently residing together or who have resided together in the
12 past, persons sixteen years of age or older who are presently residing together or
13 who have resided together in the past and who have or have had a dating
14 relationship, persons sixteen years of age or older with whom a person sixteen
15 years of age or older has or has had a dating relationship, and persons who have a
16 biological or legal parent-child relationship, including stepparents and
17 stepchildren and grandparents and grandchildren.

18 b. "Domestic violence" shall mean:

19 1) Physical harm, bodily injury, assault, or the infliction of fear of imminent
20 physical harm, bodily injury or assault, between family or household
21 members;

22 2) sexual assault of one family or household member by another; or

23 3) stalking, as defined below in subsection 14.16.010.P.1.c, of one family or
24 household member by another family or household member.

25 c. "Stalking" shall be defined as in RCW 9A.46.110,
26
27
28

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

d. "Dating relationship" shall mean, as defined in RCW 49.76.020, a social relationship of a romantic nature.

e. "Sexual assault" shall be defined as in RCW 49.76.020.

Q. "Party" includes the person charging or making a complaint or upon whose behalf a complaint is made alleging a violation of this chapter, the person alleged or found to have committed a violation of this chapter and the Office for Civil Rights.

R. "Person," as used in this chapter, includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, firm, institution, or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons, and further includes any department, office, agency or instrumentality of the City.

S. "Respondent" means any person who is alleged or found to have committed a violation of this chapter.

T. "Tier One," "Tier Two," and "Tier Three" employers are defined as follows:

1. "Tier One employer" shall mean an employer that employs more than 4 and fewer than 50 full-time equivalents on average per calendar week.

2. "Tier Two employer" shall mean an employer that employs at least 50 and fewer than 250 full-time equivalents on average per calendar week.

3. "Tier Three employer" shall mean an employer that employs 250 or more full-time equivalents on average per calendar week.

4. The determination of employer tier for the current calendar year will be calculated based upon the average number of full-time equivalents paid for per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. To determine the number of full-time equivalents, all compensated hours of all employees shall be counted, including:

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

a. work performed outside of the City; and

b. compensated hours made available by part-time employment, temporary

employment or through the services of a temporary services or staffing agency or

similar entity.

5. For employers that did not have any employees during the previous calendar year, the employer tier will be calculated based upon the average number of full-time equivalents paid for per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.

14.16.020. Accrual of Paid Sick Time and Paid Safe Time

A. All employees of Tier 1, Tier 2 and Tier 3 employers have the right to paid sick time and paid safe time as provided in this section.

B. Employees shall accrue paid time, to be used as either paid sick or safe time, as follows:

1. Employees of a Tier One or Tier Two employer shall accrue at least one hour of paid time for every 40 hours worked.

2. Employees of a Tier Three employer shall accrue at least one hour of paid time for every 30 hours worked.

C. No Tier One employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 40 hours in a calendar year. No Tier Two employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 56 hours in a calendar year. No Tier Three employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 72 hours in a calendar year.

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

1 D. In the case of employees who are exempt from overtime payment under section
2 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29
3 U.S.C. § 201 et seq.) (hereinafter referred to as “FLSA” exempt employees), no employer shall
4 be required to accrue leave for such employees for hours worked beyond a 40-hour work week.
5 If their normal work in a work week is less than 40 hours, paid sick time and paid safe time
6 accrues based upon that employee’s normal work week.

7 E. Paid sick time and paid safe time as provided in this section shall begin to accrue at the
8 commencement of employment. For individuals who are employed on the date this ordinance
9 takes effect, accrual shall begin on the date this ordinance takes effect. Accrual rates shall not
10 apply to hours worked before this ordinance takes effect.

11 F. Except as provided in Section 14.16.090, employees shall be entitled to use accrued
12 paid sick time or safe time beginning on the 180th calendar day after the commencement of their
13 employment. When an employee is separated from employment and rehired within seven
14 months of separation by the same employer, the previous period of employment shall be counted
15 for purposes of determining the employee’s eligibility to use accrued sick time or safe time under
16 this subsection, provided that if separation does occur, the total time of employment used to
17 determine eligibility must occur within two calendar years.

18 G. Unused paid sick time and paid safe time shall be carried over to the following
19 calendar year; however, no Tier One employer shall be required to allow an employee to carry
20 over a combined total of paid sick time and paid safe time in excess of 40 hours, no Tier Two
21 employer shall be required to allow an employee to carry over a combined total of paid sick time
22 and paid safe time in excess of 56 hours and no Tier Three employer shall be required to allow
23 an employee to carry over a combined total of paid sick time and paid safe time in excess of 72
24 hours.

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

1 H. A Tier One or Tier Two employer with a combined or universal paid leave policy,
2 such as a paid time off (PTO) policy, is not required to provide additional paid sick and safe
3 leave, provided that:

4 1. Available paid leave may be used for the same purposes and under the same conditions
5 as paid sick and safe time as set forth in Section 14.16.030; and

6 2. Paid leave is accrued at the rate consistent with subsection 14.16.020.B.1; and

7 3. Use of paid leave within any calendar year is limited to no less than the amounts
8 specified respectively for Tier One and Tier Two employers in subsection 14.16.020.C;
9 and

10 4. Any accrued but unused paid leave may be carried over to the following calendar year
11 consistent with subsection 14.16.020.G.

12 I. A Tier Three employer with a combined or universal paid leave policy, such as a paid
13 time off (PTO) policy, is not required to provide additional paid sick and safe leave, provided
14 that:

15 1. Available paid leave may be used for the same purposes and under the same conditions
16 as paid sick and safe time as set forth in Section 14.16.030; and

17 2. Paid leave is accrued at a rate consistent with subsection 14.16.020.B.2; and

18 3. Use of paid leave within any calendar year is limited to no less than 108 hours; and

19 4. Any accrued but unused paid leave may be carried over to the following calendar year;
20 however no Tier Three employer with a combined or universal leave policy shall be
21 required to carry over unused leave in excess of 108 hours.

22
23 J. Nothing in this section shall be construed as requiring financial or other reimbursement
24 to an employee from an employer upon the employee's termination, resignation, retirement, or
25 other separation from employment for accrued paid sick and safe time that has not been used.
26
27
28

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

1 K. If an employee is transferred to a separate division, entity, or location within the City,
2 or transferred out of the City and then transferred back to a division, entity, or location within the
3 City, but remains employed by the same employer, the employee is entitled to all paid sick and
4 safe time accrued at the prior division, entity, or location and is entitled to use all paid sick and
5 safe time as provided in this section.

6 L. When there is a separation from employment and the employee is rehired within 7
7 months of separation by the same employer, previously accrued paid sick and safe time that had
8 not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick
9 and safe time and accrue additional sick and safe time immediately upon the re-commencement
10 of employment, provided that the employee had previously been eligible to use paid sick and
11 safe time. If there is a separation of more than 7 months, an employer shall not be required to
12 reinstate accrued paid sick and safe time and for the purposes of this chapter the rehired
13 employee shall be considered to have newly commenced employment.

14 M. Subject to terms and conditions established by the employer, the employer may, but is
15 not required to, loan paid sick time and paid safe time to the employee in advance of accrual by
16 such employee.

17
18 **14.16.030. Use of Paid Sick Time and Paid Safe Time**

19 A. 1. Paid sick time shall be provided to an employee by an employer for the
20 following reasons:

- 21 a. An absence resulting from an employee's mental or physical illness,
22 injury or health condition; to accommodate the employee's need for
23 medical diagnosis care, or treatment of a mental or physical illness, injury
24 or health condition; or an employee's need for preventive medical care;
25 b. To allow the employee to provide care of a family member with a
26 mental or physical illness, injury or health condition; care of a family
27
28

member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or care of a family member who needs preventive medical care.

2. Paid safe time shall be provided to an employee by an employer for the following reasons:

a. When the employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material,

b. To accommodate the employee's need to care for a child whose school or place of care has been closed by order of a public official for such a reason.

c. For any of the following reasons related to domestic violence, sexual assault, or stalking, as set out in RCW 49.76.030:

1) To enable the employee to seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

2) To enable the employee to seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the employee's family member;

3) To enable the employee to obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

4) To enable the employee to obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking; or

5) To enable the employee to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence, sexual assault, or stalking.

B. Paid sick time and paid safe time shall be provided upon the request of an employee.

When possible, the request shall include the expected duration of the absence. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences and/or requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed.

1. If the paid leave is foreseeable, a written request shall be provided at least 10 days, or as early as possible, in advance of the paid leave, unless the employer's normal notice policy requires less advance notice;

2. If the paid leave is unforeseeable, the employee must provide notice as soon as is practicable and must generally comply with an employer's reasonable normal notification policies and/or call-in procedures, provided that such requirements do not interfere with the purposes for which the leave is needed.

C. For employees covered by the overtime requirements of the FLSA, accrued paid sick time and paid safe time may be used in hourly increments or smaller increments if an employer so designates. For FLSA exempt employees, an employer may make deductions of paid sick time and paid safe time in accordance with the FLSA. For FLSA exempt public employees, paid sick time and paid safe time must be used in accordance with a pay system established by statute,

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

ordinance or regulation or by a policy or practice established pursuant to the principles of public accountability

D. When the use of accrued time is foreseeable, the employee shall make a reasonable effort to schedule the use of sick or safe time in a manner that does not unduly disrupt the operations of the employer.

E. For use of paid sick time of more than three consecutive days for a reason set out in subsection 14.16.030.A.1, an employer may require reasonable documentation that the sick time is covered by subsection 14.16.030.A.1. Documentation signed by a health care provider indicating that sick time is necessary shall be considered reasonable documentation. An employer may not require that the documentation explain the nature of the illness. For any employee who is not offered health insurance by the employer, the employer and the employee shall each pay half the cost of any out-of-pocket expense incurred by the employee in obtaining the employer-requested documentation. These expenses are limited to the cost of services provided by health care professionals, the services of health care facilities, testing prescribed by health care professionals and transportation to the location where such services are provided. An employee who has declined to participate in the health insurance program offered by his or her employer shall not be entitled to reimbursement for out-of-pocket expenses.

F. For use of “paid safe time” of more than three consecutive days for a reason set out in subsection 14.16.030.A.2,

1. an employer may require that requests under subsections 14.16.030.A.2.a and 14.16.030.A.2.b be supported by verification of a closure order by a public official of the employee’s child’s school or childcare establishment, and the employee may satisfy this verification request by providing notice of the closure order in whatever format the employee received the notice;

2. an employer may require that requests under subsection 14.16.030.A.2.c be supported by verification that the employee or employee’s family member is a victim of domestic

1 violence, sexual assault, or stalking, and that the leave taken was for one of the purposes
2 covered by subsection 14.16.030.A.2.c. As set out in RCW 49.76.040(4), an employee
3 may satisfy this verification requirement by one or more of the following methods:

4 a. a police report indicating that the employee or employee's family member was
5 a victim of domestic violence, sexual assault, or stalking;

6 b. a court order protecting or separating the employee or employee's family
7 member from the perpetrator of the act of domestic violence, sexual assault, or
8 stalking, or other evidence from the court or the prosecuting attorney that the
9 employee or employee's family member appeared, or is scheduled to appear, in
10 court in connection with an incident of domestic violence, sexual assault, or
11 stalking; or

12 c. documentation that the employee or the employee's family member is a victim
13 of domestic violence, sexual assault, or stalking, from any of the following
14 persons from whom the employee or employee's family member sought assistance
15 in addressing the domestic violence, sexual assault, or stalking: An advocate for
16 victims of domestic violence, sexual assault, or stalking; an attorney; a member of
17 the clergy; or a medical or other professional. The provision of documentation
18 under this section does not waive or diminish the confidential or privileged nature
19 of communications between a victim of domestic violence, sexual assault, or
20 stalking with one or more of the individuals named in this subsection c; or

21 d. an employee's written statement that the employee or the employee's family
22 member is a victim of domestic violence, sexual assault, or stalking and that the
23 leave taken was for one of the purposes of subsection 14.16.030.A.2.c.

24 G. Upon mutual consent by the employee and the employer, an employee may work
25 additional hours or shifts during the same or next pay period without using available paid sick or
26 safe time for the original missed hours or shifts. However, the employer may not require the
27

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

employee to work such additional hours or shifts. Should the employee work additional shifts, the employer shall comply with any applicable federal, state or local laws concerning overtime pay.

H. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may voluntarily exchange assigned hours or “trade shifts”.

I. When paid sick or safe time is requested by an employee who works in an eating and/or drinking establishment, the employer may offer the employee substitute hours or shifts. If the employee accepts the offer and works these substitute hours or shifts, the amount of time worked during the substitute period or the amount of time requested for sick and safe time, whichever is smaller, may be deducted from the employee’s accrued sick and safe time. Should the employee work the substitute hours or shifts, the employer shall comply with any applicable federal, state or local laws concerning overtime pay. However, no employer is required to offer such substitute hours or shifts, and no employee is required to accept such hours or shifts if they are offered.

J. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may donate unused accrued paid sick leave to another employee.

K. Each time wages are paid, employers shall provide, in writing, information stating an updated amount of paid time available to each employee for use as either sick time or safe time. Employers may choose a reasonable system for providing this notification, including, but not limited to, listing remaining available paid time on each pay stub or developing an online system where employees can access their own paid leave information.

14.16.040. Exercise of Rights Protected; Retaliation Prohibited

A. It shall be a violation for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

1 B. It shall be a violation for an employer to take adverse action or to discriminate against
2 an employee because the employee has exercised in good faith the rights protected under this
3 chapter. Such rights include but are not limited to the right to use paid sick time and/or paid safe
4 time pursuant to this chapter; the right to file a complaint with the Agency about any employer's
5 alleged violation of this chapter; the right to inform his or her employer, union or similar
6 organization, and/or legal counsel about an employer's alleged violation of this section; the right
7 to cooperate with the Agency in its investigations of alleged violations of this chapter; the right
8 to oppose any policy, practice, or act that is unlawful under this section; and the right to inform
9 other employees of his or her potential rights under this section.

10 C. It shall be a violation for an employer's absence control policy to count paid sick or
11 safe time covered under this chapter as an absence that may lead to or result in any adverse
12 action taken against the employee.

13 D. The protections afforded under subsection 14.16.040.B shall apply to any person who
14 mistakenly but in good faith alleges violations of this Section 14.16.040.

15 **14.16.050. Notice and Posting**

16
17 A. Employers shall give notice that employees are entitled to paid sick time and paid safe
18 time; the amount of paid sick and safe time and the terms of its use guaranteed under this
19 chapter; that retaliation against employees who request or use paid sick and safe time is
20 prohibited; and that each employee has the right to file a complaint or bring a civil action if paid
21 sick time or paid safe time as required by this section is denied by the employer or the employee
22 is retaliated against for requesting or taking paid sick time or paid safe time.

23 B. The Agency shall create and make available to employers a poster and a model notice,
24 hereinafter referred to as the "Notice," which contains the information required under subsection
25 A of this Section for their use in complying with this subsection. The poster shall be printed in
26 English and Spanish and any other languages that the Agency determines are needed to notify
27 employees of their rights under this chapter.

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

C. Employers may comply with this section by displaying the Agency's poster in a conspicuous and accessible place in each establishment where such employees are employed.

D. Employers may also comply with this section by including the Notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the Notice to each new employee upon hiring. In either case, distribution may be accomplished electronically.

E. To meet the requirements of paragraph D of this section, employers may duplicate the text of the Notice or may use another format so long as the information provided includes, at a minimum, all of the information contained in that Notice.

F. An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$125 for the first violation and \$250 for subsequent violations.

14.16.060. Employer Records

A. Employers shall retain records documenting hours worked by employees and paid sick time taken by employees, for a period of two years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this chapter.

B. Employers shall not be required to modify their recordkeeping policies to comply with this section, as long as records reasonably indicate employee hours worked in Seattle, accrued paid sick and safe time, and paid sick and safe time taken. When an issue arises as to the amount of accrued paid sick time and/or paid safe time available to an employee under this chapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick and safe time taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated this chapter.

C. Records and documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members, created for purposes of this chapter, are required to be maintained as confidential medical records in separate files/records from the usual personnel files. If the Americans with Disabilities Act (ADA) applies, then these records must comply with the ADA confidentiality requirements.

14.16.070. Regulations

The Agency shall be authorized to coordinate implementation and enforcement of this chapter and shall promulgate appropriate guidelines or regulations for such purposes.

14.16.080. Enforcement

A. Powers and duties

1. of Agency

a. The Agency shall receive, investigate, and pass upon charges alleging violations of this chapter as defined herein, conciliate and settle the same by agreement, and monitor and enforce any agreements or orders resulting therefrom or from a subsequent hearing thereon under and pursuant to the terms of this chapter; and shall have such powers and duties in the performance of these functions as are defined in this chapter and otherwise necessary and proper in the performance of the same and provided for by law. The Agency shall further assist other City agencies and departments upon request in effectuating and promoting the purposes of this chapter.

b. The Director of the Agency is authorized and directed to promulgate rules consistent with this chapter and the Administrative Code.

2. of Commission

The Seattle Human Rights Commission shall study, advise, and make recommendations for legislation on policies, procedures, and practices which would further the purposes of this

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

chapter. The Commission shall hear appeals from the Director's determinations of no reasonable cause and, in cases involving respondents who are City departments, hear appeals from determinations of reasonable cause and the orders relating to the remedy thereof. It shall, where appropriate and necessary, in its judgment, hear and determine complaints jointly with the Hearing Examiner as provided in subsections 14.16.080.H and 14.16.080.I. The Commission shall have such powers and authority in carrying out these functions as are provided for by this chapter or otherwise established by law.

B. Charge filing, timing, amendments, notice and investigation.

1. A charge alleging a violation of this chapter shall be in writing on a form or in a format determined by the Agency, and signed by or on behalf of a charging party, and shall describe the violation complained of and should include a statement of the dates, places and circumstances and the persons responsible for such acts and practices.

2. Whenever charges are made by or on behalf of a person claiming to be aggrieved, the person making the charge must provide the Director with the name, address and telephone number of the individual on whose behalf the charge is made. Thereafter, the Director shall verify the authorization of such charge by the person on whose behalf the charge is made.

3. A charge shall not be rejected as insufficient because of failure to include all required information so long as it substantially satisfies the informational requirements necessary for processing.

4. A charge alleging a violation of this chapter or pattern of such violations may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in a violation of this chapter.

5. Charges filed under this chapter must be filed within 180 days after the occurrence of the alleged violation of this chapter with the Agency.

6. In addition to any relief authorized by this chapter, liability may accrue and an aggrieved person may obtain relief as provided in this chapter, including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful practices that have occurred during the charge filing period are similar or related to unlawful practices with regard to sick time or safe time that occurred outside the time for filing a charge.

7. The charging party or the Agency may amend a charge to cure technical defects or omissions; or to clarify and amplify allegations made therein; or to add allegations related to or arising out of the subject matter set forth, or attempted to be set forth, in the original charge. For jurisdictional purposes, such amendments shall relate back to the date the original charge was first filed. The amendment must be filed within 180 days after the occurrence of the additional violation and/or retaliation and prior to the Agency's issuance of findings of fact and a determination with respect to the original charge. Such amendments may be made at any time during the investigation of the original charge so long as the Agency will have adequate time to investigate such additional allegations and the parties will have adequate time to present the Agency with evidence concerning such allegations before the issuance of findings of fact and a determination.

8. The Director shall cause to be served or mailed by certified mail, return receipt requested, a copy of the charge on the respondent within twenty (20) days after the filing of the charge and shall promptly make an investigation thereof.

9. The investigation shall be directed to ascertain the facts concerning the violation of this Chapter alleged in the charge, and shall be conducted in an objective and impartial manner.

10. During the investigation the Director shall consider any statement of position or evidence with respect to the allegations of the charge which the charging party

1 or the respondent wishes to submit. The Director shall have authority to sign and
2 issue subpoenas requiring the attendance and testimony of witnesses, the
3 production of evidence including but not limited to books, records,
4 correspondence or documents in the possession or under the control of the person
5 subpoenaed, and access to evidence for the purpose of examination and copying,
6 and conduct discovery procedures which may include the taking of interrogatories
7 and oral depositions.

8 11. The Director may require a fact finding conference or participation in another
9 process with the respondent and any of respondent's agents and witnesses and
10 charging party during the investigation in order to define the issues, determine
11 which elements are undisputed, resolve those issues which can be resolved, and
12 afford an opportunity to discuss or negotiate settlement. Parties may have their
13 legal counsel present if desired.

14 C. Findings of fact and determination of reasonable cause or no reasonable cause.

15 1. The results of the investigation shall be reduced to written findings of fact and a
16 determination shall be made by the Director that there is or is not reasonable
17 cause for believing that a violation of this chapter has been or is being committed,
18 which determination shall also be in writing and issued with the written findings
19 of fact. Where a City department is a respondent the Director shall issue such
20 findings and determination only after having submitted proposed findings and
21 determinations to the respondent and charging party for review and comment.
22 With respect to the findings and determination, "issued" shall be defined as signed
23 and dated by the Director.

24 2. The findings of fact and determination shall be furnished promptly to the
25 respondent and charging party.

3. Once issued to the parties, the Director's findings of fact, determination and order may not be amended or withdrawn except upon the agreement of the parties or in response to an order by the Seattle Human Rights Commission after an appeal taken pursuant to Section 14.16.080.D or 14.16.080.G provided, that the Director may correct clerical mistakes or errors arising from oversight or omission upon a motion from a party or upon the Director's own motion.

D. Determination of no reasonable cause – Appeal from and dismissal.

If a determination is made that there is no reasonable cause for believing a violation of this chapter has been committed, the charging party shall have the right to appeal such determination to the Commission within 30 days of the date the determination is signed by the Director by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error. The Commission shall promptly deliver a copy of the statement to the Agency and respondent and shall promptly consider and act upon such appeal by either affirming the Director's determination or remanding it to the Director with appropriate instructions. In considering such appeals the Commission shall only review whether the investigation was adequate and the Director's findings are supported by a preponderance of the evidence. The burden shall be on the charging party to demonstrate that the matter should be remanded to the Director. In the event no appeal is taken or such appeal results in affirmance, the determination of the Director shall be final and the charge deemed dismissed and the same shall be entered on the records of the Agency.

E. Determination of reasonable cause -- Conciliation and settlement of cases involving all respondents except City departments.

1. In all cases except a case in which a City department is the respondent, if a reasonable cause determination is made, the Director shall endeavor to eliminate the unlawful practice by conference, conciliation and persuasion. Conditions of

1 settlement may include (but are not limited to) the elimination of the unlawful
2 practice, hiring, reinstatement or upgrading with or without back pay, lost
3 benefits, attorney's fees, admittance or restoration to membership in a labor
4 organization, or such other action which will effectuate the purposes of this
5 chapter, including action which could be ordered by a court, except that damages
6 for humiliation and mental suffering shall not exceed \$10,000. Any settlement
7 agreement shall be reduced to writing and signed by the Director, the charging
8 party and the respondent. An order shall then be entered by the Director setting
9 forth the terms of the agreement. Copies of such order shall be delivered to all
10 affected parties.

11 2. In case of failure to reach an agreement and of conciliation and upon a written
12 finding to that effect furnished to the charging party and respondent, except a case
13 in which a City department is a respondent, the Director shall promptly cause to
14 be delivered the entire investigatory file, including the charge and any and all
15 findings made, to the City Attorney for further proceedings and hearing under this
16 chapter pursuant to Section 14.16.080.H.

17 F. Determinations of reasonable cause -- Conciliation, settlement and conclusion of cases
18 involving City departments as respondents.

19 In all cases in which a City department is a respondent:

20 1. A determination of reasonable cause by the Director shall be deemed a finding
21 that an unlawful practice has been committed by respondent and is dispositive of
22 this issue for all future proceedings under this chapter, unless appealed, reversed
23 and remanded as provided in this chapter.

24 2. Within sixty days of a determination of reasonable cause, the Director shall
25 confer with the parties and determine an appropriate remedy, which remedy may
26 include (but is not limited to) hiring, reinstatement or upgrading with or without
27

back pay, lost benefits, attorney's fees, or such other action as will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed \$10,000. Such remedy shall be reduced to writing in an order of the Director.

3. The charging party must sign a release in the form and manner requested by the Department, releasing the City from further liability for acts giving rise to the charge in order to obtain the benefits of the remedy provided under this section and before payment can be made. Without such release, the Director's order with respect to the charging party's individual relief shall have no force and effect. In such event the Director shall notify the parties involved in writing.

4. In all cases where the remedy determined by the Director before or after any appeal includes a monetary payment which exceeds the sum of \$5,000, the charge or claim, the Director's determination, order, the charging party's signed release and such further documentation as may be required shall be presented to the City Council for passage by separate ordinance. If the City Council fails or refuses to appropriate the amount ordered by the Director within 90 days, the Director shall certify the case to the Hearing Examiner for a hearing to determine the appropriate monetary relief in the case which determination shall be final and binding upon the City.

5. Where the Director's order includes a monetary payment of \$5,000 or less, such payment shall be made under the authority and in the form and manner otherwise provided for by law for payment of such claims.

G. Appeals to the Commission from determinations of reasonable cause and orders of excess involving City departments as respondents.

In all cases in which a City department is a respondent:

1. The charging party or respondent may appeal the Director's order and determination of reasonable cause to the Commission within 30 days of the Director's order by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error.

2. The Commission shall promptly mail a copy of the statement to the Department and to the other party and shall promptly consider and act upon such appeal by either affirming the Director's determination or order or remanding it to the Director with appropriate instructions.

3. The filing of an appeal shall stay the enforcement of any remedy provided for in the Director's determination or order during the pendency of the appeal.

4. In such appeal, the Commission shall consider only the record submitted to it by the Department and written statements of positions by the parties involved and, in its discretion, oral presentation. The Commission shall reverse the Director's determination or order only upon a finding that it is clearly erroneous.

H. Complaint and hearing of cases with all respondents except City departments.

1. Following submission of the investigatory file from the Director in cases involving all respondents under 14.16.080.E, the City Attorney shall prepare a complaint against such respondent relating to the charge and facts discovered during the investigation thereof and prosecute the same in the name and on behalf of the Department and the City at a hearing before the Hearing Examiner sitting alone or with representatives of the Commission as provided in this chapter and to appear for and represent the interests of the Department and the City at all subsequent proceedings; provided, if the City Attorney determines that there is no legal basis for a complaint to be filed or for proceedings to continue, a statement

of the reasons therefore shall be filed with the Department, charging party and the respondent.

2. The complaint shall be served on respondent in the usual manner provided by law for service of complaints and filed with the Seattle Hearing Examiner. A copy of such complaint shall be furnished to the charging party.

3. Within 20 days of the service of such complaint upon it, the respondent shall file its answer with the Hearing Examiner and serve a copy of the same on the City Attorney.

4. Upon the filing of the complaint, the Hearing Examiner shall promptly establish a date for the hearing of such complaint and give notice thereof to the Commission, the City Attorney and respondent, and shall thereafter hold a public hearing on the complaint, which hearing shall commence no earlier than 90 days nor later than 120 days from the filing of the complaint, unless otherwise ordered by the Hearing Examiner.

5. After the filing of a complaint with the Hearing Examiner, it may be amended only with the permission of the Hearing Examiner, which permission shall be granted when justice will be served thereby and all parties are allowed time to prepare their case with respect to additional or expanded charges which they did not and could not have reasonably foreseen would be in issue at the hearing.

6. The hearing shall be conducted by a Hearing Examiner from the Office of Hearing Examiner, or a hearing examiner pro tempore appointed by the Hearing Examiner from a list approved by the Commission, sitting alone or with representatives of the Commission if any are designated. Such hearings shall be conducted in accordance with SMC Chapter 3.02 and the Hearing Examiner rules applicable to cases brought under this Title 14.

7. The Commission, within 30 days after notice of the date of hearing from the Hearing Examiner, at its discretion, may appoint two of its members who have not otherwise been involved in the charge, investigation, fact finding, or other resolution and proceeding on the merits of the case, who have not formed an opinion on the merits of the case, and who otherwise have no pecuniary, private or personal interest or bias in the matter, to hear the case with the Hearing Examiner. If the Commission has designated representatives they shall each have an equal vote with the Hearing Examiner, except the Hearing Examiner shall be the chairperson of the panel and make all evidentiary rulings. Should a question arise as to previous involvement, interest or bias of an appointed Commissioner, the Hearing Examiner shall resolve the issue in conformance with the law on the subject.

8. The review of all matters properly brought under this subsection 14.16.080.H shall be de novo. Nothing in this paragraph shall be construed to limit or prevent de novo review of matters brought before the Hearing Examiner (or the Hearing Examiner and members of the Commission as the case may be) under Sections 14.04.170, 14.06.110, 14.08.170, or 14.10.130.

I. Decision and order.

1. Within 30 days after conclusion of the hearing, the Hearing Examiner presiding at the hearing (or the Examiner and Commissioners as the case may be) shall prepare a written decision and order. The final decision shall be filed as a public record with the City Clerk, and copies thereof mailed to each party of record and to the Agency.

2. Such decision shall contain a brief summary of the evidence considered and shall contain findings of fact, conclusions of law upon which the decision is

based, and an order detailing the relief deemed appropriate, together with a brief statement of the reasons therefore.

3. In the event the Hearing Examiner (or a majority of the panel composed of the Examiner and Commissioners), determines that a respondent has committed a violation of this chapter, the Hearing Examiner (or panel majority) may order the respondent to take such affirmative action or provide for such relief as is deemed necessary to correct the practice, effectuate the purpose of this chapter, and secure compliance therewith, including but not limited to hiring, reinstatement, or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed \$10,000. Back pay liability shall not accrue from a date more than 2 years prior to the initial filing of the charge.

4. Respondent shall comply with the provisions of any order affording relief and shall furnish proof of compliance to the Agency as specified in the order. In the event respondent refuses or fails to comply with the order, the Director shall notify the City Attorney of the same and the City Attorney shall invoke the aid of the appropriate court to secure enforcement or compliance with the order.

K. Violation -- Penalty.

It is unlawful for any person to willfully engage in an unfair practice under this chapter or willfully resist, prevent, impede or interfere with the Director or Hearing Examiner in the performance of their duties under this chapter, or to fail, refuse, or neglect to comply with any lawful order of the Director or Hearing Examiner. Conduct made unlawful by this section constitutes a violation subject to the provisions of Chapter 12A.02 of the Seattle Criminal Code

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

(Ordinance 102843, as amended), and any person convicted thereof may be punished by a civil fine or forfeiture not to exceed \$500.

14.16.090. New Employers

The provisions of this Chapter shall not apply to Tier One and Tier Two employers until 24 months after the hire date of their first employee. For the purposes of this section, employer tier shall be calculated based upon the average number of full-time equivalents employed per calendar week during the first 90 calendar days following the hire date of their first employee.

14.16.100. Confidentiality and Nondisclosure

A. Except as provided in subsection B of this section, an employer shall maintain the confidentiality of information provided by the employee or others in support of an employee's request for sick or safe days under this section, including health information and the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, that the employee has requested or obtained leave under this act, and any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

B. Information given by an employee may be disclosed by an employer only if it is

1. requested or consented to by the employee;
2. ordered by a court or administrative agency; or
3. otherwise required by applicable federal or state law.

14.16.110. Encouragement of more generous sick time policies; no effect on more generous policies

A. Nothing in this chapter shall be construed to discourage or prohibit an employer from the adoption or retention of a paid sick and safe time policy more generous than the one required herein.

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

1 B. Nothing in this chapter shall be construed as diminishing the obligation of an
2 employer to comply with any contract, collective bargaining agreement, employment benefit
3 plan or other agreement providing more generous sick and safe time to an employee than
4 required herein.

5 C. Nothing in this chapter shall be construed as diminishing the rights of public
6 employees regarding paid sick or safe time or use of sick or safe time as provided under federal
7 or Washington state law, or the Seattle Municipal Code.

8
9
10 **14.16.120. Waiver of the Provisions of the Chapter**

11 The provisions of this chapter shall not apply to any employees covered by a bona fide
12 collective bargaining agreement to the extent that such requirements are expressly waived in the
13 collective bargaining agreement in clear and unambiguous terms.

14 Any waiver by an individual of any provisions of this chapter shall be deemed contrary to
15 public policy and shall be void and unenforceable.

16
17 **14.16.130. Other Legal Requirements**

18 This chapter provides minimum requirements pertaining to paid sick and safe time and
19 shall not be construed to preempt, limit, or otherwise affect the applicability of any other law,
20 regulation, requirement, policy, or standard that provides for greater accrual or use by employees
21 of sick or safe time, whether paid or unpaid, or that extends other protections to employees; and
22 nothing in this chapter shall be interpreted or applied so as to create any power or duty in conflict
23 with federal or state law. Nor shall this chapter be construed to preclude any person aggrieved
24 from seeking judicial review of any final administrative decision or order made under this
25 chapter affecting such person.

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

Section 3. Consistent with the duties established for the Seattle Human Rights Commission in Section 2 of this ordinance, subsection 3.14.931.E of the Seattle Municipal Code, last amended by ordinance 118392, is amended as follows:

3.14.931 Seattle Human Rights Commission -- Duties

E. Hear appeals and hearings as set forth in Chapters 14.04, ~~((and))~~ 14.08, and 14.16 of the Seattle Municipal ~~((Court))~~ Code.

Section 4. Eighteen months after the effective date of this ordinance, the Seattle Office for Civil Rights and the Seattle Office of City Auditor will provide Council with a written evaluation of the impacts this ordinance has had on employees and employers. This evaluation will include an assessment of patterns and practices relating to shift swapping, the potential abuse of leave by employees who take time for other than the intended purposes, use of explicit waivers of the requirements of this ordinance in collective bargaining agreements, and of complaints and enforcement actions.

Section 5. This ordinance shall take effect on September 1, 2012.

Section 6. Severability. The several provisions of this ordinance are declared to be separate and severable and an order of any court of competent jurisdiction holding invalid any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or holding invalid the application thereof to any person or circumstance, shall not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Passed by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this

Ben Noble

Leg – paid sick leave

Sep 12, 2011

Version #6

____ day of _____, 2011.

President _____ of the City Council

Approved by me this ____ day of _____, 2011.

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

Monica Martinez Simmons, City Clerk

(Seal)